

EVIDENTIARY HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
Application for Certification ) Docket No.  
Pico Power Project by ) 02-AFC-3  
Silicon Valley Power )  
\_\_\_\_\_ )

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM B  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

WEDNESDAY, JUNE 11, 2003

9:10 a.m.

Reported by:  
Peter Petty  
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

John L. Geesman, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Gary Fay, Hearing Officer

STAFF AND CONSULTANTS PRESENT

Dick Ratliff, Staff Counsel

Matthew Trask, Project Manager

Stuart Itoga

Gabriel D. Taylor

PUBLIC ADVISER

Roberta Mendonca

APPLICANT

Scott A. Galati, Attorney  
Grattan & Galati

Leslie J. Ward, General Manager  
Donald McArthur, Environmental Manager  
Pico Power Project  
James H. Pope, Director of Electric Utility  
John C. Roukema, Assistant Director of Electric  
Utility  
Silicon Valley Power  
City of Santa Clara

Andrea E. Grenier, Principal  
Argonaut Consulting  
Environmental Project Manager  
Pico Power Project

Douglas M. Davy, Consulting Scientist  
Tetra Tech Foster Wheeler, Inc.

Richard B. Booth  
ENV Environmental

APPLICANT

Gregory S. Darwin, Associate  
RTP Environmental Associates, Inc.

ALSO PRESENT

Kenneth J. Lim, Supervising Air Quality Engineer  
Bay Area Air Quality Management District

Joanne Randall  
Sentek Environmental

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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## P R O C E E D I N G S

9:10 a.m.

HEARING OFFICER FAY: This is the second evidentiary hearing for the Pico Power project. To my right is the Presiding Member of the Committee delegated to review this project for the Commission, Commissioner John Geesman. Commissioner, do you have any comments?

PRESIDING MEMBER GEESMAN: No comments.

HEARING OFFICER FAY: Okay. At this time I'd like to take introductions, and we'll begin with the applicant, Mr. Galati.

MR. GALATI: Hi, I'm Scott Galati and I represent Silicon Valley Power on the Pico Power project as the licensing counsel. To my left is Doug Davy with Tetra Tech Foster Wheeler. He's the lead on preparing the AFC and all the supplemental filings.

Our Environmental Permit Manager is Andrea Grenier, who many of you know. And the General Manager of the project, Les Ward. Also with us today is an environmental consultant helping us in various areas, but primarily in air quality, is Don McArthur. And we also have Greg Darwin and Rick Booth, our air quality experts,

1 should they be needed.

2 HEARING OFFICER FAY: Okay. Mr.  
3 Ratliff.

4 MR. RATLIFF: Dick Ratliff, staff  
5 counsel. With me is Matt Trask, the Project  
6 Manager. To my right is Gabe Taylor, our air  
7 quality witness. And in the audience is Stuart  
8 Itoga, our biological resources witness.

9 HEARING OFFICER FAY: Okay, and you  
10 expect another witness later who will be arriving  
11 from the Air District, is that correct?

12 MR. RATLIFF: Yes, Mr. Lim from the Air  
13 District should be here today.

14 HEARING OFFICER FAY: Okay, good.  
15 Anybody else, any member of the public or any  
16 other party? Is CURE represented here today? I  
17 see no indication.

18 All right. The Public Adviser is here.  
19 Would you like to make any comments?

20 MS. MENDONCA: Thank you very much. I  
21 just wanted to remark that the Public Adviser's  
22 Office has prepared what we call a status report  
23 which we will docket at the conclusion of the  
24 hearing process, which outlines what my office did  
25 in the way of public outreach and the instances of

1 public participation that have come through my  
2 office.

3 HEARING OFFICER FAY: Okay, thank you.  
4 And today we have arranged for a teleconference  
5 link, and I understand we have on the line Joanne  
6 Randall from Sentek Environmental. Also John  
7 Roukema and Jim Pope from Silicon Valley Power.

8 The hearing today was publicly noticed  
9 by notice dated May 13th. The notice also  
10 included relevant dates for filing testimony and  
11 briefs. And extra copies of both the notice and  
12 the temporary exhibit list are available on the  
13 table.

14 As at the previous hearing, the purpose  
15 of today's formal evidentiary hearing is to  
16 establish the factual record necessary to reach a  
17 decision in this case. And this is done through  
18 the taking of written and oral testimony, as well  
19 as exhibits from the parties.

20 I believe the parties present are all  
21 familiar with our procedures and the proper way to  
22 present witnesses and introduce evidence, so I  
23 will not repeat those features.

24 Presentations today will occur in the  
25 following order: First we'll ask if there are any



1 preliminary matters, then go to old business  
2 regarding conditions of certification for soil and  
3 water 6 and 8 and for Trans-7.

4 Then receive testimony on biological  
5 resources and testimony on air quality; testimony  
6 on alternatives. We will hold moving all the  
7 exhibits until after all the testimony is  
8 presented, as we did before. And receive motions  
9 at that time for exhibits.

10 Then we'll review the schedule for the  
11 briefs; and finally, review the state of the  
12 record and identify what, if any, subjects must  
13 remain open.

14 I understand from the parties that  
15 today's topics are not in dispute; and no party  
16 has indicated to me a need for cross-examination.  
17 If such a need arises we will certainly give that  
18 opportunity. Where that is the case a party may  
19 introduce written prefiled testimony with a  
20 declaration by the witness who prepared the  
21 testimony, signed under penalty of perjury.

22 The parties are responsible for filing  
23 with the Commission's docket unit copies of all  
24 exhibits which they introduce into evidence today.  
25 While addressing a specific topic each party shall

1       either identify the specific exhibits related to  
2       and supporting its testimony, or refer to the  
3       location of any reference to exhibits contained in  
4       its written prefiled testimony. This is to insure  
5       that the transcript of the hearing contains a  
6       complete reference to the supporting record at the  
7       place in the transcript where the topic is  
8       discussed.

9               I suggest -- well, I mentioned that  
10       we'll hold on moving exhibits.

11              We understand from the Public Adviser  
12       that there has been no show of interest from the  
13       public and there appears to be no members of the  
14       public present. However, we will allow public  
15       comment later on if anybody comes in and wishes to  
16       make any such comment.

17              So, I'd like to begin now and just ask  
18       if there's any preliminary matters. Mr. Galati,  
19       do you have anything?

20              MR. GALATI: I have some preliminary  
21       matters. I might as well just do this now. There  
22       is an updated general arrangement drawing which I  
23       have distributed to the Committee and to Mr. Trask  
24       and Mr. Ratliff. We'd just like to mark that for  
25       identification as the next exhibit, if that works.

1 HEARING OFFICER FAY: Well, the next  
2 exhibit would be exhibit 31.

3 MR. GALATI: Okay, and it is entitled,  
4 the general arrangements. It is, for the record,  
5 a five-page document, 11 by 17. And it is  
6 prepared by Black and Veatch, entitled, Silicon  
7 Valley Power, Pico Power Project, General  
8 Arrangements.

9 HEARING OFFICER FAY: Okay. Anything  
10 further?

11 MR. GALATI: No, I think we can handle  
12 everything else either in staff's presentation or  
13 in the topic areas.

14 HEARING OFFICER FAY: Okay. Mr.  
15 Ratliff, any preliminary matters?

16 MR. RATLIFF: No.

17 HEARING OFFICER FAY: Okay. Then let's  
18 move to the -- we were awaiting some modifications  
19 to condition soil and water 6 and 8, and trans-7.  
20 Should we go to the staff on that?

21 MR. GALATI: If you would.

22 HEARING OFFICER FAY: I believe the ball  
23 was in their court,

24 MR. TRASK: Staff has reached agreement  
25 with Silicon Valley Power on the changing of the

1 wording of soil and water 6 and 8, and in trans-7.

2 We can go ahead and stipulate to that at this  
3 point and submit it in a brief or in a memo,  
4 however you would like. We do have a copy of it  
5 if you'd like to see it now. And I believe we  
6 could enter that in as an exhibit.

7 HEARING OFFICER FAY: Why don't we enter  
8 that as an exhibit. We'll identify that -- is  
9 there a sheet that contains both revised  
10 conditions? A document?

11 MR. TRASK: Yes.

12 HEARING OFFICER FAY: Okay.

13 MR. TRASK: Plus a few others.

14 MR. GALATI: Actually, I believe that  
15 it's in your brief that you filed on part one.

16 MR. TRASK: That's correct.

17 MR. GALATI: Part one, I believe that  
18 soils 6 and 8 were agreed to with modifications in  
19 the brief that match our modifications, as well, I  
20 think close enough. And for the record, we agree  
21 with the conditions of certification as laid out  
22 in 6 and 8.

23 HEARING OFFICER FAY: Okay, that's fine.

24 MR. GALATI: I would like to point out  
25 that there still is one area in dispute, which is

1 soil and water 7, I believe, which deals with the  
2 Act of God language. And we submit that to the  
3 Committee on our brief.

4 HEARING OFFICER FAY: Okay, let's just  
5 leave it at that. That's sufficient closure --

6 MR. TRASK: We do have a few other sort  
7 of housecleaning issues. We held a workshop two  
8 weeks ago on --

9 PRESIDING MEMBER GEESMAN: Mr. Trask,  
10 can I interrupt?

11 MR. TRASK: Sure.

12 PRESIDING MEMBER GEESMAN: You guys  
13 spoke of soil and water 6 and 8. What about  
14 trans-7?

15 MR. TRASK: We are also in agreement on  
16 trans-7.

17 MR. GALATI: Yes, I apologize. That's  
18 handled in the same brief, and we agree with the  
19 modifications staff made in their brief to trans-  
20 7.

21 PRESIDING MEMBER GEESMAN: Okay.

22 MR. TRASK: We held a workshop two weeks  
23 ago on preconstruction activities which SVP is  
24 well underway in anticipation of breaking ground  
25 on the day of getting the certificate.

1           Out of that discussion we realized that  
2           there was some room and some necessity for some  
3           minor changes to a few other conditions. Mr.  
4           Galati has a copy over there. All very minor.  
5           Generally it's changing deadlines from say 60 days  
6           in advance to 45 days in advance of starting  
7           construction.

8           And we can also submit that either now,  
9           as an exhibit, or in our brief or a memo.

10          HEARING OFFICER FAY: Have you had an  
11          opportunity to review those revisions, Mr. Galati?

12          MR. GALATI: Yes, we had an opportunity  
13          to review those. They match what we have  
14          requested. There are a couple other conditions  
15          that we've also requested that we're still working  
16          with staff. We understand we have agreement,  
17          minor modifications that if staff produces either  
18          comments or a memo, we'll certainly add to the  
19          record to show our agreement with them.

20          They are primarily verification timeline  
21          changes and timing of submittals, which are  
22          important to this project for beginning  
23          construction. But staff's been very good in that  
24          compliance workshop working with us on those  
25          issues.

1 HEARING OFFICER FAY: Okay, can we mark  
2 that revision document for identification? We'll  
3 mark it exhibit 32. And give us the title, how's  
4 that identified?

5 MR. TRASK: How should we identify this?  
6 This would be staff corrections to conditions of  
7 certification in hazardous materials, soil and  
8 water resources, facility design and that's all.

9 HEARING OFFICER FAY: All right. And  
10 have you docketed a copy of that?

11 MR. TRASK: No, we have not.

12 HEARING OFFICER FAY: Will you do that?

13 MR. TRASK: We shall.

14 HEARING OFFICER FAY: Okay. And does  
15 that -- do the parties agree, we have full  
16 closure, not only on soil and water 6 and 8, trans  
17 7, but also on the other revisions identified in  
18 exhibit 32?

19 MR. GALATI: Yes. Mr. Davy pointed out  
20 to me that I think I was using the wrong number.  
21 Soil and water 6 is the actual force majeure Act  
22 of God language condition. That is one we do not  
23 have agreement on. We have agreement on soil and  
24 water 8, which is the language specifically  
25 addressing how the well test is to be done and

1 used for purposes of the backup well.

2 But soil and water 6 is the -- when the  
3 project is allowed to use the backup well and for  
4 how long. And we asked for that force majeure Act  
5 of God language to be in that one.

6 So I apologize for that, if I can  
7 correct the record.

8 HEARING OFFICER FAY: And that was  
9 covered in the original briefs?

10 MR. GALATI: Correct.

11 HEARING OFFICER FAY: Okay. All right,  
12 anything further from the staff?

13 MR. TRASK: At some point we need to  
14 discuss closing the record in biological  
15 resources.

16 HEARING OFFICER FAY: Well, that's the  
17 next topic we're going to. So, Mr. Galati, move  
18 to you if you're prepared to present your evidence  
19 on biological resources.

20 MR. GALATI: Yes. I'd like to call Mr.  
21 Doug Davy and have him sworn at this time.

22 HEARING OFFICER FAY: Please swear the  
23 witness.

24 //

25 //



1 Whereupon,

2 DOUGLAS M. DAVY

3 was called as a witness herein, and after first  
4 having been duly sworn, was examined and testified  
5 as follows:

6 DIRECT EXAMINATION

7 BY MR. GALATI:

8 Q Mr. Davy, can you please state your full  
9 name for the record, who you're employed with and  
10 what your role is on this project?

11 A My name is Douglas Davy; I am employed  
12 with Tetra Tech FW. My role on this project is as  
13 AFC Project Manager.

14 Q And did you review the biological  
15 resources testimony of Brett Hartman?

16 A Yes, I did.

17 MR. GALATI: I'd like to identify that  
18 as exhibit 33 at this time. And in that  
19 testimony, Mr. Hartman is also sponsoring portions  
20 of exhibit 1, the AFC, specifically section 8.2;  
21 portions of exhibit 2, specifically the responses  
22 to CEC data requests relating to biological  
23 resources; a portion of exhibit 3, which is  
24 responses to the first set of CEC data requests,  
25 specifically numbers 15 through 22; exhibit 10,

1 which is the applicant's resource management plan;  
2 and exhibit 11, which is applicant's comment on  
3 the staff assessment, part one.

4 BY MR. GALATI:

5 Q Mr. Davy, are you familiar with the  
6 conclusions of that testimony?

7 A Yes, I am.

8 Q And do you agree with the conclusions  
9 that the applicant agrees with the conditions of  
10 certification in biological resources and with the  
11 conclusion the project will comply with LORS and  
12 not have a significant impact?

13 A Yes, I agree with those conclusions.

14 MR. GALATI: We are also asking to be  
15 identified today another exhibit, Mr. Fay, which  
16 is an email from Cecelia Brown with the U.S. Fish  
17 and Wildlife Service sent to Mr. Stuart Itoga on  
18 Wednesday, May 21, 2003.

19 And in that email it specifically  
20 provides a written determination that in the best  
21 of her opinion with the documents in front of her  
22 that the project appears to comply with the low  
23 effect habitat conservation plan. I'd like to  
24 mark that one as exhibit 34.

25 HEARING OFFICER FAY: Okay, so marked.

1       What is the date on the email?

2               MR. GALATI:   The date is May 21, 2003.

3               HEARING OFFICER FAY:   And has that been  
4       docketed?

5               MR. GALATI:   I do not believe it was  
6       docketed.   I have a copy of it, but I think it was  
7       sent to --

8               HEARING OFFICER FAY:   Will you insure --  
9       be sure that it's docketed.

10              MR. GALATI:   I will insure it's  
11       docketed.

12              That concludes our testimony on  
13       biological resources.

14              HEARING OFFICER FAY:   Questions from the  
15       staff?

16              MR. RATLIFF:   No.

17              HEARING OFFICER FAY:   Mr. Galati, I take  
18       it that the email completely resolves the concern  
19       that we had at the last hearing?

20              MR. GALATI:   Correct.   The concern was  
21       one of processing time, not of substance.   And  
22       while U.S. Fish and Wildlife Service had worked  
23       with us at workshops and provided quite a bit of  
24       oral representation that we did, in fact, or  
25       would, in fact, comply with the low effect

1 determination, the email satisfies our concern  
2 that that's been put in writing.

3 HEARING OFFICER FAY: Okay. Good. All  
4 right, anything further?

5 MR. GALATI: Nothing on biological  
6 resources.

7 HEARING OFFICER FAY: Staff?

8 MR. RATLIFF: Staff witness is Stuart  
9 Itoga.

10 HEARING OFFICER FAY: Please swear the  
11 witness.

12 Whereupon,

13 STUART ITOGA  
14 was called as a witness herein, and after first  
15 having been duly sworn, was examined and testified  
16 as follows:

17 DIRECT EXAMINATION

18 BY MR. RATLIFF:

19 Q Mr. Itoga, did you prepare the portion  
20 of the staff assessment titled biological  
21 resources?

22 A Yes, I did.

23 Q And was that testimony true and complete  
24 to the best of your knowledge and belief?

25 A Yes, it was.

1           Q     And was it your testimony and is it your  
2     testimony today that with the mitigation  
3     identified in your testimony that the project will  
4     be consistent with all applicable LORS and that  
5     the environmental impacts of the project will be  
6     mitigated to a less than significant impact?

7           A     Yes, I believe they will.

8           MR. RATLIFF: That completes my direct.

9           HEARING OFFICER FAY: Okay. Does the  
10    applicant have any questions of the staff witness?

11          MR. GALATI: No.

12          HEARING OFFICER FAY: Mr. Itoga, you're  
13    satisfied that U.S. Fish and Wildlife concerns  
14    have been addressed?

15          MR. ITOGA: Yes.

16          HEARING OFFICER FAY: All right. And,  
17    Mr. Ratliff, what was the exhibit number on the --

18          MR. RATLIFF: I was hoping you wouldn't  
19    ask me because --

20          HEARING OFFICER FAY: -- staff  
21    assessment? Was that 29?

22          MR. GALATI: It is 29.

23          HEARING OFFICER FAY: Okay. Thank you.

24          MR. GALATI: I don't believe that --  
25    exhibit 30 was an addendum.

1 HEARING OFFICER FAY: Yes.

2 MR. ITOGA: There was some changes to  
3 the biology section in the addendum, so that  
4 should be part of the --

5 MR. GALATI: Okay.

6 HEARING OFFICER FAY: Good. All right,  
7 thank you, Mr. Itoga.

8 We want to take up air quality next but  
9 Mr. Lim -- or Dr. Lim is not here. Do you have a  
10 recommendation that we wait or not?

11 MR. RATLIFF: I think we probably should  
12 wait, because we need him. Mr. Taylor went out to  
13 try to find out where he might be.

14 MR. TRASK: He's traveling from the  
15 South Bay this morning, I know that.

16 HEARING OFFICER FAY: He might be stuck  
17 in traffic, okay. If there's no objection we'll  
18 move to alternatives then.

19 MR. GALATI: You bet. No objection.

20 HEARING OFFICER FAY: Okay, why don't  
21 you go ahead.

22 MR. GALATI: Mr. Davy has previously  
23 been sworn, and he's also our witness for  
24 alternatives.

25 //

1 Whereupon,

2 DOUGLAS M. DAVY

3 was recalled as a witness herein, and having been  
4 previously duly sworn, was examined and testified  
5 further as follows:

6 DIRECT EXAMINATION

7 BY MR. GALATI:

8 Q Mr. Davy, are you familiar with the  
9 testimony of yourself, identified for alternatives  
10 in this matter?

11 A Yes, I am.

12 Q And do you have any changes or  
13 modifications to that testimony?

14 A I have no changes.

15 MR. GALATI: And, Mr. Fay, in that  
16 testimony which I'd like to mark the next exhibit  
17 number, which would be exhibit 35, the testimony  
18 of Douglas M. Davy on alternatives, Mr. Davy's  
19 also sponsoring section 9 of the AFC which is  
20 exhibit 1, so that is also part of Mr. Davy's  
21 testimony.

22 BY MR. GALATI:

23 Q Mr. Davy, have you reviewed the staff  
24 assessment, part two, section on alternatives?

25 A Yes, I have reviewed that.

1           Q     And do you agree with the conclusions in  
2     the staff section?

3           A     Yes, I do.

4           MR. GALATI:  No further questions on  
5     alternatives.

6           HEARING OFFICER FAY:  Okay, thank you.  
7     Staff.

8           MR. RATLIFF:  Yes, the staff witness for  
9     alternatives --

10          HEARING OFFICER FAY:  I'm sorry, do you  
11     have any questions?

12          MR. RATLIFF:  Oh, do we have any  
13     questions?  No, no questions.

14          HEARING OFFICER FAY:  Then go ahead.

15          MR. RATLIFF:  The staff witness for  
16     alternatives is Matt Trask.  
17     Whereupon,

18                         MATT TRASK  
19     was called as a witness herein, and after first  
20     having been duly sworn, was examined and testified  
21     as follows:

22          MR. RATLIFF:  Mr. Trask's testimony is  
23     in a memorandum to the Committee dated May 30,  
24     2003, which has been docketed, and --

25          HEARING OFFICER FAY:  We'll mark that as



1 exhibit 36. And since you've got pagination,  
2 we'll just mark the whole document as exhibit 36.  
3 You can refer to it even on the other topics.

4 MR. RATLIFF: Yes. This document is  
5 entitled Pico Power project, staff assessment,  
6 phase two.

7 DIRECT EXAMINATION

8 BY MR. RATLIFF:

9 Q Mr. Trask, did you prepare the portion  
10 of that document titled alternatives?

11 A I did.

12 Q And is that document true and correct to  
13 the best of your knowledge and belief?

14 A Yes.

15 Q Do you have any changes to make in that  
16 testimony?

17 A No, I don't.

18 Q Did you conclude that there were no  
19 significant impacts from the project? Is that  
20 part of your testimony?

21 A Correct.

22 Q And could you very briefly summarize  
23 your conclusions regarding alternatives?

24 A We examined other sites and other  
25 technologies -- other sites in the Santa Clara

1 area and other technologies, and found that no  
2 other site nor any other type of technology would  
3 meet the goals of the project.

4 Q Does that complete your testimony?

5 A Yes, it does.

6 MR. RATLIFF: I have no more questions  
7 for Mr. Trask.

8 HEARING OFFICER FAY: Does the applicant  
9 have any questions of the witness?

10 MR. GALATI: No questions.

11 HEARING OFFICER FAY: Okay. All right,  
12 that concludes taking evidence on alternatives.

13 We still don't have Dr. Lim. Do you  
14 want to go ahead on air quality?

15 MR. TRASK: I think we can proceed for  
16 some amount without him anyway. For instance, we  
17 do, I believe, have correct agreement on our  
18 construction-related air quality conditions and we  
19 can discuss that now, if you'd like.

20 HEARING OFFICER FAY: Well, I think  
21 since the statement we need from Dr. Lim stands  
22 alone as a statement from the District, then we  
23 can go ahead.

24 MR. GALATI: Okay. At this time I'd  
25 like to call our air quality expert, Greg Darwin.

1 And he needs to be sworn.

2 HEARING OFFICER FAY: Please swear the  
3 witness.

4 Whereupon,

5 GREGORY S. DARVIN  
6 was called as a witness herein, and after first  
7 having been duly sworn, was examined and testified  
8 as follows:

9 DIRECT EXAMINATION  
10 BY MR. GALATI:

11 Q Mr. Darwin, would you please state your  
12 full name for the record, who you're employed by,  
13 and what your role is on the Pico Power project.

14 A Gregory Darwin. Independent contractor  
15 right now. And my role on the project was  
16 preparing the air quality modeling assessment for  
17 this project.

18 Q And, Mr. Darwin, are you familiar with  
19 the previously filed testimony in your name on air  
20 quality?

21 A Yes.

22 MR. GALATI: At this time I'd like to  
23 mark that, which would be, I believe, exhibit 37.

24 HEARING OFFICER FAY: Yes. Exhibit 37,  
25 air quality testimony of Greg Darwin.

1 BY MR. GALATI:

2 Q Does that testimony represent your  
3 opinion to the best of your knowledge?

4 A Yes, it does.

5 Q And do you have any changes or  
6 modifications to that testimony at this time?

7 A I have no changes.

8 MR. GALATI: Mr. Fay, Mr. Darwin is also  
9 sponsoring portions of exhibit 1, specifically  
10 section 8.1, which is the air quality modeling  
11 analysis; and a portion of exhibit 2, which is the  
12 responses to CEC data adequacy requests,  
13 specifically those identified in the air quality  
14 section; and a portion of exhibit 3, which is the  
15 responses to first set of data requests,  
16 specifically those under the tab of air quality.

17 BY MR. GALATI:

18 Q Mr. Darwin, have you reviewed phase two  
19 of the staff assessment?

20 A Yes, I have.

21 Q And do you concur with the conclusion  
22 that with the conditions of certification the  
23 project will comply with all applicable LORS?

24 A Yes, I do.

25 Q Do you also conclude that with the

1 conditions of certification the project will not  
2 result in any significant air quality impacts?

3 A Yes, I do.

4 Q Okay. Mr. Darwin, did you participate  
5 in a staff workshop on June 5th?

6 A Yes, I did.

7 Q And at that workshop was there  
8 discussion had on the construction air quality  
9 conditions?

10 A Yes, there were.

11 Q And in your testimony you presented your  
12 understanding of modifications to those air  
13 quality conditions that we had discussed with  
14 staff?

15 A Yes.

16 Q Have you had an opportunity to review  
17 staff's draft --

18 MR. GALATI: Maybe if I could take a  
19 moment here. Would you like us to mark or discuss  
20 this at this time? Would that be okay?

21 MR. TRASK: Sure.

22 BY MR. GALATI:

23 Q Have you had an opportunity, Mr. Darwin,  
24 to review the changes to the construction  
25 conditions set in this draft supplemental

1 testimony of Gabe Taylor and Keith Golden?

2 A Yes, I have.

3 HEARING OFFICER FAY: Let's mark that  
4 for identification as exhibit 38.

5 MR. GALATI: Exhibit 38, and  
6 specifically it is corrections and additions to  
7 the Pico Power project staff assessment.

8 HEARING OFFICER FAY: Is that -- Mr.  
9 Trask, is that different from the document we  
10 previously identified?

11 MR. TRASK: Yes, it is different.

12 HEARING OFFICER FAY: Corrections?

13 MR. TRASK: This one is covering only  
14 the air quality, construction related air quality  
15 conditions AQ-C-1, C-2, C-3, C-4, 5, 6, and then  
16 AQ-20.

17 HEARING OFFICER FAY: Thank you, go  
18 ahead.

19 MR. TRASK: Previous AQ-4 has been  
20 deleted, so what was AQ-5 is now 4, and so on.

21 BY MR. GALATI:

22 Q Mr. Darwin, specifically did you review  
23 staff's proposed changes to AQC-1, AQC-2, AQC-3,  
24 the deletion of AQC-4, the renumbering and  
25 modifications to AQC-5 and AQC-6?

1 A Yes, I did.

2 Q And do you agree with those changes?

3 A All of them, yes, I do.

4 Q And with those changes do you have any  
5 dispute with any of the construction conditions at  
6 this time?

7 A No.

8 MR. GALATI: Mr. Fay, while we also have  
9 AQ-20 represented in here, since it does involve  
10 the District, I'm not sure I can put on the record  
11 that we agree with AQ-20, as staff has modified  
12 it. My understanding is that might still need Mr.  
13 Lim's input -- or Dr. Lim's input.

14 MR. TRASK: I will note that the changes  
15 to AQ-20 are minor, in that the previous number  
16 had been rounded to four decibel points, and  
17 instead we put it out to five decibel points. And  
18 then three words were added that were in the PDOC,  
19 but were not in the original phase two staff  
20 assessment, so that just updates PDOC language.

21 Specifically under item 2, towards the  
22 end of the condition, it now reads: initiation  
23 shutdown of combustion turbine, water mist or"  
24 those are the three words "steam injection for  
25 power augmentation."

1 BY MR. GALATI:

2 Q Mr. Darwin, do you agree with those  
3 changes?

4 A Yes, I do.

5 HEARING OFFICER FAY: All right, thank  
6 you. Mr. Trask, has a copy of exhibit 38 been  
7 docketed?

8 MR. TRASK: No, it hasn't. We will  
9 certainly do that.

10 HEARING OFFICER FAY: Okay. I  
11 understand that is a draft, but I think we need --

12 MR. TRASK: It can be finalized today.

13 HEARING OFFICER FAY: Okay. I think we  
14 need that document docketed, the one we're dealing  
15 with today. And you can explain or attach to your  
16 brief any changes in a final one, or if there are  
17 no changes, explain that, so we're sure to have  
18 the exact copy we dealt with today.

19 All right, thank you. Does staff have  
20 any questions of Mr. Darwin?

21 MR. RATLIFF: Certainly not in the form  
22 of cross-examination, but I wonder if it might be  
23 useful to have Mr. Darwin explain the nature of  
24 the differences in the numbers that appeared in  
25 the PDOC and the difficulty we've had reconciling



1       those, so the Committee will at least know what  
2       the issue is we're trying to get straight with the  
3       District.

4               I think it might be useful for you at  
5       least to hear that briefly, what it is.

6               HEARING OFFICER FAY: That would be  
7       helpful. Does this still involve concerns about  
8       the extent of excursions?

9               MR. RATLIFF: No.

10              MR. TRASK: No. Not at all.

11              HEARING OFFICER FAY: No.

12              MR. RATLIFF: It has to do with the  
13       numbers of -- the amount of the projected  
14       emissions and offsets necessary for the project.

15              The District put certain numbers into  
16       the determination of compliance that i believe the  
17       applicant has requested be changed slightly. And  
18       I think Mr. Darwin can explain better than I the  
19       reasons for that.

20              HEARING OFFICER FAY: Okay.

21              MR. DARVIN: I'll certainly try anyway.

22              HEARING OFFICER FAY: All right, if you  
23       can help us.

24              MR. DARVIN: We based all our emission  
25       calculations on vendor guarantees directly from

1 General Electric. They provided us a data sheet  
2 that showed us what the pound per hour, or mass  
3 flow rates were for the turbine.

4 And so in all our calculations, both  
5 short-term, you know, pounds per hour, and annual  
6 tons per year were based directly on a data sheet  
7 from GE. And the modeling was based on that; the  
8 health risk assessment, everything was based on  
9 those vendor guarantee numbers, which we presented  
10 in our original filing.

11 To date, Dr. Lim at the Bay Area has --  
12 and I do not know why, and I can't comment for  
13 him, but has tried to come up with a different set  
14 of calculations, I think based on either his own  
15 procedure, or possibly some data that he received  
16 from General Electric, himself.

17 But this data hasn't been provided to  
18 us, first of all. And second of all, we're going  
19 with the vendor guarantees that were provided for  
20 this project.

21 I also want to add, too, that all the  
22 emissions that we modeled and calculated have been  
23 fully offset. So our numbers that we presented in  
24 the application, the Bay Area's numbers are very  
25 very close. I mean we're talking, I think, maybe

1 800 pounds in one case and .2 pounds per hour in  
2 other cases. So they're very close.

3 But I think they represent sort of two  
4 different calculation methodologies. Ours was  
5 based directly from GE, and the Bay Area's was  
6 based on, I think, another set of processes, which  
7 I really can't comment on because I haven't seen  
8 how he sends numbers.

9 HEARING OFFICER FAY: Do your offsets  
10 cover both scenarios, both calculations?

11 MR. DARVIN: Yes, they do, with the  
12 exception, I think, of POC, where there's about an  
13 800 pound difference. In other words we  
14 presented, I think, 11.5 tons per year of POC; the  
15 Bay Area's calculated 11.9. But I think in the  
16 recalculation, and Gabe can probably correct me, I  
17 think we've all recalculated that at 11.2 tons.  
18 Did Ken agree with that?

19 MR. TAYLOR: Correct.

20 MR. DARVIN: Okay, yeah. So actually I  
21 think we're fully covered no matter which way we  
22 go.

23 HEARING OFFICER FAY: How will we be  
24 sure?

25 MR. RATLIFF: Well, I think the problem

1 we have is until we talk with the District and get  
2 these numbers reconciled we can't be sure. The  
3 District is really kind of critical to settling on  
4 a number. And we haven't been able to do that  
5 yet, as of today.

6 But the difference is, I guess, what I  
7 think Mr. Darwin is saying is that the differences  
8 are very small. And with the exception of the POC  
9 number it doesn't matter in terms of whether or  
10 not they will be offset. It does matter with  
11 regard to the POC number, though, is that correct?

12 MR. DARVIN: Well, actually not any more  
13 because the new calculation it's actually lower  
14 than what we presented, so we're completely  
15 covered there, too.

16 MR. RATLIFF: So even with regard to POC  
17 there is no --

18 MR. DARVIN: Everything will be fully  
19 offset, --

20 MR. RATLIFF: -- problem in terms of --

21 MR. DARVIN: -- yeah, there's no  
22 problem.

23 MR. RATLIFF: -- whether the number  
24 would be offset. So it really becomes then, seems  
25 to be an exercise of getting an accurate number so

1       you know what the number is. Knowing what the  
2       number is and getting the final accurate number  
3       that will appear in the District's final  
4       determination of compliance, that's what we're  
5       trying to determine.

6               HEARING OFFICER FAY: Okay. But, Mr.  
7       Darvin, your testimony today is that regardless of  
8       how this discrepancy goes the applicant has  
9       provided offsets that fully offset either  
10      calculation?

11             MR. DARVIN: Yes.

12             HEARING OFFICER FAY: Okay, and --

13             MR. DARVIN: I'm sorry, I was going to  
14      say, Gabe can actually run through the  
15      differences. He's got them summarized right  
16      there. It's 11.2 versus 11.17. I'm kind of  
17      guessing what those numbers are, but they're very  
18      close. So, yeah, everything will be fully offset  
19      regardless of which way it goes.

20             MR. TRASK: And I'll add that the  
21      difference would be how much of the certificate  
22      would be essentially refunded back to SVP as a  
23      separate certificate; the surplus would be  
24      refunded as a separate certificate.

25             HEARING OFFICER FAY: So does that mean

1       that the applicant has essentially already  
2       deposited a surplus of ERCs with the District?

3               MR. McARTHUR:  The District is in  
4       receipt of all the offsets --

5               HEARING OFFICER FAY:  Could you come up  
6       to the microphone and identify yourself?

7               MR. McARTHUR:  Donald McArthur, Pico  
8       Environmental Manager.  The District has already  
9       received all the offsets and a surrender letter  
10      for all those offsets that are listed in the AFC.

11              HEARING OFFICER FAY:  Mr. Darwin, do you  
12      know that to be the case?

13              MR. DARVIN:  Yes.

14              HEARING OFFICER FAY:  And is that your  
15      testimony?

16              MR. DARVIN:  Yes, it is.

17              HEARING OFFICER FAY:  Okay.  Anything  
18      further, Mr. Galati?

19              MR. GALATI:  Nothing further.

20              HEARING OFFICER FAY:  Mr. Ratliff, any  
21      more questions?

22              MR. RATLIFF:  No.

23              HEARING OFFICER FAY:  Okay.  Let's move  
24      then to the staff's air quality testimony.

25              MR. RATLIFF:  Okay, the staff witness is

1 Mr. Gabriel Taylor.

2 HEARING OFFICER FAY: Please swear the  
3 witness.

4 Whereupon,

5 GABRIEL TAYLOR  
6 was called as a witness herein, and after first  
7 having been duly sworn, was examined and testified  
8 as follows:

9 DIRECT EXAMINATION  
10 BY MR. RATLIFF:

11 Q Mr. Taylor, did you prepare the portion  
12 of exhibit 36 which is titled air quality?

13 A Yes, I did.

14 Q And you also prepared the exhibit 38  
15 that has been marked draft, which has the  
16 construction condition language in it, is that  
17 correct?

18 A That is correct; it's a draft document  
19 that is still -- a few corrections, mostly typos  
20 and that sort of thing. But it is correct  
21 substantively.

22 Q It is correct substantively, then?

23 A That's correct.

24 Q So are these documents, with the  
25 exception of those typos, true and correct to the

1 best of your knowledge and belief?

2 A Yes, they are.

3 Q Do you have any changes to make in them  
4 that are substantive at this time then?

5 A I will have changes to the Commission  
6 certification at some point to bring them into  
7 agreement with the final determination of  
8 compliance the District writes.

9 Q Right.

10 A But I do not believe that they will be  
11 substantive because the disagreements between the  
12 applicant and the District on this point are very  
13 minor.

14 Q Okay. You heard Mr. Darwin's testimony.  
15 Do you have anything further to say with regard to  
16 the things that he testified about concerning the  
17 disagreement between the applicant and the  
18 District?

19 A I would like to clarify. The applicant  
20 and the District are disagreeing on two numbers,  
21 the steady state emissions of oxides of nitrogen  
22 and the carbon monoxide on the pounds-per-hour  
23 basis. Their numbers differ on about a 1.1  
24 percent difference.

25 The applicant is using a vendor



1       guarantee that staff agrees with. The District  
2       was using a slightly lower number, a slightly more  
3       stringent but also lower offsetting number.

4               And we have not been provided with the  
5       information the District is basing this number on.  
6       So, --

7               Q     You heard Mr. Darvin testify that the  
8       number that the District is using would be offset  
9       and that the number that the applicant has used  
10      would also be fully offset. Do you agree with  
11      that?

12      A     I agree with that.

13      Q     So this is really a very small number,  
14      then, that has no substantive difference, in your  
15      view?

16      A     It's a 1.1 percent difference.

17      Q     Okay. Do you have anything else that  
18      you want to comment on in your testimony?

19      A     Not at this time.

20              MR. RATLIFF: Okay, that concludes the  
21      staff testimony.

22              HEARING OFFICER FAY: Mr. Galati, any  
23      questions?

24              MR. GALATI: No questions.

25              HEARING OFFICER FAY: Okay. I think

1       what we're going to have to do if Dr. Lim has not  
2       arrived before we conclude the hearing is direct  
3       staff to submit his declaration under penalty of  
4       perjury. And that should mirror the language of  
5       section 25523(d)(2), to insure that the District  
6       is satisfied that complete offsets have been  
7       identified. And anything further that he wants to  
8       add to the record in terms of comments.

9               When can we expect that? With your  
10       briefs or do you know?

11              MR. RATLIFF: As soon as I can arrange  
12       to get the declaration from Mr. Lim. I'll have to  
13       talk to him. If he doesn't show up I can go draw  
14       up the declaration, and when he does show up I can  
15       have him sign it, so.

16              HEARING OFFICER FAY: Okay. The notice  
17       identified June 18th as the date for filing  
18       briefs. So, why don't we just direct that you  
19       include it at that time, unless we hear something  
20       further.

21              MR. RATLIFF: Okay.

22              HEARING OFFICER FAY: Okay. Let's move  
23       now to the -- well, that covers all our evidence.  
24       Mr. Galati, do you want to move your exhibits?

25              MR. GALATI: Yeah, I'd like to move my

1 particular exhibits in. And they are 31, exhibit  
2 33, 34, 35, 37. I believe those are all of my  
3 exhibits.

4 HEARING OFFICER FAY: Any objection?  
5 Hearing none, so moved.

6 Mr. Ratliff.

7 MR. RATLIFF: Yes, the staff would move  
8 its exhibits which include the staff assessment,  
9 which I believe you said was exhibit 30, is that  
10 correct?

11 HEARING OFFICER FAY: And 29.

12 MR. RATLIFF: 29 was it, I'm sorry.

13 HEARING OFFICER FAY: Modified by  
14 exhibit 30.

15 MR. RATLIFF: And exhibit 36, which is  
16 the phase two assessment for air quality and  
17 alternatives; and exhibit 38, which are the  
18 corrections to the air quality conditions.

19 MR. GALATI: I think exhibit 32, as  
20 well, staff corrections to the hazardous  
21 materials.

22 MR. RATLIFF: Yes, 32.

23 HEARING OFFICER FAY: Any objection?

24 MR. GALATI: None.

25 HEARING OFFICER FAY: Okay. So moved.

1           Is there any problem with the June 18th  
2     date for briefs being due that's identified in the  
3     notice?

4           MR. GALATI:  None from the applicant's  
5     side.

6           MR. RATLIFF:  No.

7           HEARING OFFICER FAY:  Okay.  And it  
8     sounds like very limited in detail.

9           And then I'd like to get a sense from  
10    the parties of a clear identification of exactly  
11    how the record needs to be held open.  Is it only  
12    to receive the final determination of compliance  
13    from the District?

14          MR. GALATI:  I believe so.  I know that  
15    staff, for example, if the FDOC comes out and it  
16    has the modifications that we have proposed to the  
17    District.  At the last workshop we sat down with  
18    Dr. Lim and tried to explain the numbers.  They're  
19    minor minor number modifications is what we're  
20    talking about, as we talked about today.

21          We anticipate that those would come out  
22    in the FDOC which would require some modifications  
23    to the conditions of certification to make them  
24    match.

25          What we propose is that rather than

1 staff do that as an evidentiary matter, that the  
2 FDOC be left open. When the FDOC and the  
3 declaration of Ken Lim comes in, that the record  
4 be closed. And staff can made modifications to  
5 the Committee in the form of a supplemental brief.

6 HEARING OFFICER FAY: Mr. Ratliff, is  
7 that acceptable?

8 MR. RATLIFF: That's agreeable to us,  
9 yeah.

10 HEARING OFFICER FAY: When do you  
11 anticipate the FDOC?

12 MR. RATLIFF: Well, the comment period  
13 for the FDOC, I believe, is over late in June, and  
14 usually the time it takes for the final  
15 determination of compliance to be produced depends  
16 on how many comments have been received.

17 It's our understanding that no comments  
18 have been received, so it shouldn't take any  
19 considerable length of time to do that. I'd hope  
20 maybe a week or less. But it really isn't in our  
21 hands, it's in the District's hands.

22 HEARING OFFICER FAY: So you anticipate  
23 perhaps early July?

24 MR. RATLIFF: That's what we would hope.

25 MR. GALATI: And to update that, of

1 course we're hoping for sooner than that. And if  
2 I could briefly describe to the Committee that  
3 there was quite a bit of work done, as you may  
4 remember from our prehearing conference, going on  
5 between CARB and the USEPA Region IX early on in  
6 preparation of this PDOC, and quite a bit of  
7 input.

8 Mr. Trask facilitated a lot of inter-  
9 agency conference calls. And there were basically  
10 issues primarily resolved around BACT and the  
11 excursion language condition.

12 Our understanding is that that condition  
13 came out exactly like everybody agreed. We do not  
14 anticipate comments from any of those agencies,  
15 and therefore we would hope that the District  
16 could turn around the FDOC very very quickly.

17 They already have our comments. We  
18 would like to see it come out the day after the  
19 close of comment period. There should be no  
20 reason that that isn't done. We have provided the  
21 District with an electronic form of all of our  
22 changes. And assuming that Dr. Lim agrees that  
23 vendor guarantees would be more appropriate to use  
24 and the other minor modifications that we've made,  
25 he has the document prepared.

1           So, we're going to push him to come out  
2           with it the day after the close of comment period,  
3           which, I believe, is the 23rd of June.

4           And expressing some frustration on the  
5           applicant's part is that it is sometimes difficult  
6           to get that response to be what it should. There  
7           is virtually no work left to do to go from a PDOC  
8           to an FDOC. And we find it very difficult to  
9           understand why all the front-end loading work on  
10          the PDOC should not result in the FDOC coming out  
11          lightning speed.

12          HEARING OFFICER FAY: That may be true,  
13          however it is the District's call, so we must  
14          await their response.

15          Let's go off the record for a minute.

16          (Recess.)

17          HEARING OFFICER FAY: When we broke we  
18          were anticipating Dr. Ken Lim from the Bay Area  
19          Air Quality District. Mr. Ratliff, do you want to  
20          sponsor him?

21          MR. RATLIFF: Yes, the staff will  
22          sponsor Dr. Lim as our witness.

23          HEARING OFFICER FAY: Dr. Lim, are you  
24          willing to be sworn, put under oath?

25          DR. LIM: Yes.

1 HEARING OFFICER FAY: Good, Would the  
2 court reporter please swear the witness.  
3 Whereupon,

4 KENNETH LIM  
5 was called as a witness herein, and after first  
6 having been duly sworn, was examined and testified  
7 as follows:

8 DIRECT EXAMINATION

9 BY MR. RATLIFF:

10 Q Dr. Lim, could you very briefly state  
11 your position and qualifications with the Air  
12 District?

13 A Yes. I'm the principal engineer for  
14 energy projects including power plants at the Bay  
15 Area Air Quality Management District.

16 Q And in that capacity did you prepare the  
17 preliminary determination of compliance for the  
18 Bay Area Air District?

19 A Yes, I did.

20 Q And will you be responsible for  
21 preparing the final determination of compliance,  
22 as well?

23 A Yes.

24 Q The determination of compliance that you  
25 did prepare has certain numbers with regard to the



1 amounts of offsets and emissions that are  
2 currently in flux, that are under discussion, is  
3 that correct?

4 A Yes.

5 Q And could you describe what the nature  
6 of that discussion is for the Committee?

7 A Can you be more descriptive in your  
8 question?

9 Q Yes. Could you explain to the Committee  
10 the --

11 A What discussion?

12 Q Apparently the applicant has provided  
13 certain numbers to the Air District and to the  
14 staff that represent the emissions from the  
15 project and the amount of offsets that would be  
16 required.

17 And the Air District has put certain  
18 numbers in the preliminary determination of  
19 compliance that are reflective of that. But since  
20 that time apparently there has been some  
21 continuing discussion about what are the correct  
22 numbers to put into the final determination of  
23 compliance.

24 And one of the things that we previously  
25 discussed today is the nature of the uncertainty

1 about those numbers. And we'd hoped that may you  
2 would clarify that for us today, what the  
3 uncertainty is all about concerning those numbers.

4 A The primary differences in the estimate  
5 of numbers came about from two pollutant classes.  
6 One is what we call the precursor organic  
7 compounds, or the organic emissions. And the  
8 other one the fine particulate PM10.

9 We based our estimates of the emissions  
10 of these respective compounds based on early  
11 information provided in the original application  
12 and clarification supplied by the applicant,  
13 Silicon Valley Power.

14 Since the PDOC was released the  
15 applicant has provided additional information  
16 indicating that startup and shutdown emissions,  
17 organic emissions are -- can be assured at a lower  
18 rate than they originally anticipated.

19 And as a result, the organic emissions  
20 will go down slightly. And we expect to be in  
21 agreement with those numbers. It's just a matter  
22 of working out the details. But, that's the  
23 purpose of the preliminary determination of  
24 compliance so that it gives us an opportunity, all  
25 the parties to review the numbers and have a

1 chance to refine them, so to speak, before the  
2 final determination of compliance.

3 And so that will cause a decrease in the  
4 PDOC emissions cap that we enter in the permit  
5 condition. And I think that will proceed smoothly  
6 with the publication of the final determination of  
7 compliance.

8 The other area is the PM10 emissions,  
9 and these are, again, emissions from the power  
10 plant, the combustion turbine and the duct burners  
11 firing. And, again, the applicant has offered a  
12 refinement of the predicted emissions from these  
13 two sources that operate conjunctively.

14 And in essence it means that a more  
15 refined calculation of, for example, the turbine  
16 operating alone and the turbine operating in  
17 conjunction with the duct burners.

18 And since the applicant is willing to  
19 commit to those lower emission rates, we can  
20 accept that because we will be entering them as  
21 permit conditions subject to verification by  
22 source test showing that the lower rates,  
23 individual rates of these components, which added  
24 together result in the total combined emissions  
25 out the stack.

1           And the applicant has agreed that we  
2           will add those additional conditions. We consider  
3           these changes minor, since both parties, the  
4           District and the applicant would agree to those  
5           conditions, and that will be reflected in the  
6           final determination of compliance.

7           As far as the other pollutants, the  
8           differences are very very minor, in a decimal  
9           place or whatever. And well within reason as far  
10          as best engineering estimates of what the actual  
11          emissions would be.

12          So we feel that those issues are largely  
13          resolved. When I say largely, this is based on  
14          information gathered since the issuance of the  
15          preliminary determination of compliance. And I  
16          think it's prudent to review all the numbers and  
17          finalize it in a complete document before we say  
18          that unequivocally that everything -- but as far  
19          as I see, as an engineer, they all are in  
20          essential agreement, within reason.

21          Q       Concerning the final determination of  
22          compliance, first of all, what is the end of the  
23          comment period for the preliminary determination  
24          of compliance?

25          A       June 23rd of this year.

1           Q     And have you received comments on the  
2 preliminary determination of compliance thus far?

3           A     Just in terms of oral questions and  
4 comments over the phone.

5           Q     Okay.

6           A     But nothing in written yet.

7           Q     How long do you think it will take you  
8 to prepare the final determination of compliance  
9 after the comment period closes?

10          A     I expect to finish my work estimated  
11 within a two-week period. But then the Air  
12 District has its routine with -- do further review  
13 by upper management before it's officially  
14 released. So, my estimate is in the three- to  
15 four-week period.

16          Q     So you think it'll be about three to  
17 four weeks before you have the final determination  
18 of compliance?

19          A     It could be less than that.

20          Q     Yes.

21          A     I'm basing it on past experience with a  
22 large number of power plants that the Air District  
23 has worked with the Energy Commission in the past.  
24 An issue may come up and we want to make sure that  
25 all issues are resolved before the final

1 determination of compliance.

2 Q Including, I assume, the numbers that  
3 we've talked about concerning startup emissions  
4 and so forth?

5 A That's right.

6 Q Okay. In terms of this project, the  
7 Energy Commission is required to get from the Air  
8 District a certification that a power plant  
9 applicant has identified and will obtain the  
10 offsets necessary for the project.

11 In this particular project, am I correct  
12 in my understanding that the offsets have already  
13 been obtained by the applicant?

14 A That is correct. The applicant has  
15 obtained all the necessary official emission  
16 reduction credits, and they are now in the  
17 possession of the Air District.

18 Q And that would be true regardless of  
19 whether the original numbers were used or the  
20 lower numbers that you expect to be used in the  
21 final determination of compliance, is that  
22 correct?

23 A That's correct.

24 Q Okay. Is there anything else that you  
25 think is important for the Committee to hear

1 concerning the preliminary determination of  
2 compliance or the final determination of  
3 compliance that you haven't already told us?

4 A No.

5 MR. RATLIFF: I have no further  
6 questions.

7 HEARING OFFICER FAY: Does the applicant  
8 have any questions of Dr. Lim?

9 MR. GALATI: Yeah, actually I do.

10 CROSS-EXAMINATION

11 BY MR. GALATI:

12 Q Dr. Lim, I have to deal with the issue  
13 of three to four weeks after the close of comment  
14 period for the FDOC. At first, I think it's fair  
15 to tell you that three to four weeks causes  
16 significant financial and scheduling conflicts.

17 My first question deals with there  
18 appear to be a lot of agency participation,  
19 interagency participation in the preparation of  
20 the PDOC. Would that be a fair characterization?

21 A Yes.

22 Q And was it your understanding when you  
23 issued the PDOC that the PDOC addressed the  
24 concerns of CARB and USEPA?

25 A They addressed the concerns of those

1 agencies at the time. And the principal issue at  
2 that time was best available control technology  
3 requirements. Since I cannot speak on behalf of  
4 those agencies, I cannot predict what other issues  
5 that may or may not have come up since that early  
6 discussion.

7 Q So based on your discussion and the  
8 items you discussed, leaving aside any issues they  
9 may have with something you didn't discuss, but  
10 with those issues that you did discuss, you don't  
11 anticipate any comments from EPA or CARB on those  
12 issues, do you?

13 A On the issues we discussed, which is  
14 primarily best available control technology, I  
15 think the agencies are in agreement with the terms  
16 and conditions in the PDOC.

17 Q With respect to comments, is it fair to  
18 say that the only comments you received orally and  
19 in workshops have been from the applicant?

20 A No. There have been additional  
21 discussions, clarifications, questions from the  
22 Air Resources Board, California Air Resources  
23 Board, and the U.S. Environmental Protection  
24 Agency. These are informal telephone  
25 conversations.



1           And one member of the public asking some  
2       questions.

3           Q     Do you anticipate getting any written  
4       comments from CARB, USEPA or that member of the  
5       public on those issues that you talked to them  
6       about?

7           A     Very possible, yes.

8           Q     Okay. Are any of those areas that were  
9       brought up, is it something that the applicant can  
10      help you with in responding to those comments?

11          A     At this point I'm not sure what the  
12      extent of the nature of those. I do not  
13      anticipate them to be issues that we have not  
14      anticipated. But, obviously, I can't predict nor  
15      have these agencies signals that they will or will  
16      not raise new additional issues. This is  
17      certainly within their prerogative.

18          Q     Okay. Just going to pose a  
19      hypothetical. Assume that you get no comment  
20      letters. How long would it take you to prepare an  
21      FDOC?

22          A     The question is obviously dependent on  
23      my particular workload at the office at that time,  
24      as well as this, and certainly this is one of my  
25      highest, if not the highest priority at that time.

1           Anticipating that there are no comments,  
2           and I think a reasonable very fast turnaround  
3           would be something in the order of one week for my  
4           effort. And I would certainly work toward  
5           accelerating the approval and review by upper  
6           management in our office, because we recognize the  
7           importance of this and other energy projects, as  
8           well.

9           Q     I think with all due respect the project  
10          had some delays in the area of air quality  
11          throughout the process. And we're trying to keep  
12          a schedule that would allow us to meet our  
13          commercial operation date, which is very important  
14          for this project, as a public power project.

15                And it literally is coming down to the  
16          day you can get out your FDOC. Unfortunately, it  
17          has come down to that.

18                And so I'd like to take this opportunity  
19          to do whatever is necessary and whatever we can,  
20          from the applicant's standpoint. We've given you  
21          our comments electronically, such that if you  
22          agree with them you can adopt them, you know,  
23          actually accept the changes and get an FDOC out.

24                Is there any way that you can start  
25          preparing the FDOC now, assuming no comments, so

1       that you can start the review process with your  
2       management and with legal. And then if no  
3       comments come in, you're essentially a lot closer  
4       to being done than waiting till that close of  
5       comment period?

6           A     I anticipate working toward that effort,  
7       yes.

8           MR. GALATI: Well, I think that's all we  
9       can ask of you. And, again, we'd like to --  
10      unfortunately, you're the third baseman here, and  
11      we need this document out in June so that we can --  
12      -- the Energy Commission can incorporate, do what  
13      it needs to do to get us doing our construction.

14           I know that's aggressive, but I'd ask  
15      you to do whatever you can. We've talked to CARB  
16      and EPA and we don't believe that they're going to  
17      have comments on the PDOC. They've been invited  
18      to participate here and they've chosen not to.  
19      Our experience has been that when there's that  
20      much interagency work, we don't anticipate many  
21      new issues coming up.

22           So, assuming that's the case, and we  
23      understand if something comes up, something comes  
24      up. But assuming that's the case, we'd again  
25      implore you to devote all your resources to this.

1 DR. LIM: In response I'd like to add  
2 that we, at the Air District, were also  
3 instrumental working with the Energy Commission to  
4 solicit this involvement by the various agencies  
5 you mentioned early on. And we had hoped that  
6 this would also accelerate the process to working  
7 toward a final determination of compliance.

8 We want to make sure that everything is  
9 indeed finished; dot all the i's, cross the t's.  
10 And if that can be done in an earlier stage, we  
11 would be in favor of it, as long as all the  
12 requirements are met.

13 HEARING OFFICER FAY: Mr. Galati, in  
14 your questioning of Dr. Lim regarding the  
15 schedule, are you anticipating that the Committee  
16 needs time to produce the PMPD and the statute  
17 requires a 30-day comment period on the PMPD  
18 before the Commission can --

19 MR. GALATI: Absolutely anticipating  
20 that. And I think that's why the sooner the FDOC  
21 can get in your hands, the better you have the  
22 opportunity to complete your work and get to the  
23 public comment period.

24 And, again, I would hope that the front-  
25 end loading of the PDOC and working with the

1 agencies would pay off on the turnaround from the  
2 close of comments to the FDOC. And I just wanted  
3 to let Dr. Lim know how important the schedule is  
4 to us.

5 HEARING OFFICER FAY: Anything further?

6 MR. GALATI: Nothing further from the  
7 applicant.

8 HEARING OFFICER FAY: Anything from the  
9 staff?

10 MR. RATLIFF: No.

11 HEARING OFFICER FAY: Okay. Dr. Lim, I  
12 want to thank you very much for coming up. I know  
13 it's a long trip, but you had some very important  
14 information for us and we appreciate you appearing  
15 under oath and advising our record. Thank you.

16 So, the witness is excused.

17 Are there any other matters before we  
18 close the record? We will close the record for  
19 all matters except the receipt of the FDOC. And  
20 after receipt of the FDOC, staff would be given,  
21 what, one week? Is that enough time to file a  
22 supplemental brief?

23 MR. RATLIFF: Well, I assume the purpose  
24 of that would be to confirm that we agree with the  
25 numbers in the FDOC. We can do that immediately

1 after it is filed. So, it shouldn't take more  
2 than why don't we say -- what do you think --  
3 three days?

4 We'll do it within a week, within a  
5 week, then.

6 HEARING OFFICER FAY: You don't  
7 anticipate needing a reply, Mr. Galati?

8 MR. GALATI: No.

9 HEARING OFFICER FAY: We'll just leave  
10 it at this, then. All right, so within one week  
11 of receipt of the FDOC staff will file a response,  
12 even if the response is that you don't have  
13 anything further.

14 MR. RATLIFF: It may be a very brief  
15 response, hopefully.

16 HEARING OFFICER FAY: Right. Okay.

17 MR. TRASK: I will add that I will  
18 contact USEPA and ARB to see, one, whether there  
19 will be comments from them; and two, whether they  
20 can accelerate the submittal of those comments.

21 HEARING OFFICER FAY: That would be  
22 appreciated, I'm sure, by the applicant, and by  
23 the Committee.

24 MR. GALATI: Mr. Fay, I just actually  
25 have one more cleanup item.

1 HEARING OFFICER FAY: Um-hum.

2 MR. GALATI: In the compliance workshop  
3 that we had with staff, there's always, on a  
4 project that has a tight schedule, the  
5 verification timelines are always something. And  
6 staff's been very good on working with us.

7 And I just wanted to ask Mr. Trask on  
8 the compliance end of things what the Commission  
9 Staff's view is on the verifications. Are they  
10 set in stone? Or is it something that there's  
11 some flexibility with the compliance project  
12 manager?

13 MR. TRASK: There has been demonstrated  
14 considerable flexibility in other projects.

15 MR. GALATI: Okay. And the staff  
16 assessment, if adopted by the Committee, in the  
17 compliance section it would allow for the  
18 compliance project manager to expedite some things  
19 let's say quicker than 60 days, if he could?

20 MR. TRASK: That's certainly been the  
21 practice in other projects.

22 HEARING OFFICER FAY: As long as it is  
23 in the verification as opposed to the condition,  
24 itself.

25 MR. GALATI: That's my understanding, as

1 well. That's all I had as a cleanup item.

2 Thanks.

3 HEARING OFFICER FAY: Good. Anything  
4 further from the staff?

5 Okay. Commissioner?

6 All right. With the exception of  
7 receiving the FDOC the record is closed. And that  
8 concludes our taking of evidence on the Pico Power  
9 Plant project.

10 Thank you, all. We are adjourned.

11 (Whereupon, at 10:35 a.m., the hearing  
12 was adjourned.)

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## CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,  
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